Supreme Court, U.S.
FILED

95 1258 FEB 7 - 1996

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

Jeremiah W. (Jay) Nixon, Attorney General of Missouri, and John Maupin, Chairman, Missouri Ethics Commission, *Petitioners*,

v.

Thomas D. Carver, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Of counsel:

CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 Eye Street
Washington, D.C. 20006

JEREMIAH W. NIXON
Attorney General

JAMES R. LAYTON*
Chief Deputy Atty. General

AMY E. RANDLES
CYNTHIA A. BARRETT
STEPHEN R. MARTIN II
Assistant Attorneys General

P.O. Box 899
Jefferson City, MO 65102
(314) 751-3321
Counsel for Petitioners

* *Counsel of Record*

84

QUESTION PRESENTED

In the 1994 general election, the voters of Missouri overwhelmingly approved an initiative to impose graduated limits on campaign contributions, based on the size of the constituency served by the particular political office. The purpose of these limits was to eliminate as much as possible the perception that significant contributors to political campaigns were obtaining undue influence with elected officials of the State. The question presented by this suit, a challenge to the constitutionality of those limits, is:

Whether the First Amendment prohibits a State from adopting campaign contribution limits for state and local offices that are substantially lower than the $1,000 limit approved by this Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), for presidential and congressional elections.

PARTIES TO THE PROCEEDING

The parties in this suit are Jeremiah W. (Jay) Nixon, Attorney General of Missouri; John Maupin, Chair of the Missouri Ethics Commission; and Thomas D. Carver.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT 3

REASONS FOR GRANTING THE WRIT 7

I. The decision of the Eighth Circuit marks a critical moment in post-*Buckley* jurisprudence -- a point at which this Court should again give direction for future campaign finance reform rather than leaving that decision to play an important role in the ongoing political debate over those reform efforts. 7

II. Missouri's law exemplifies the kind of limits being debated throughout the United States. 10

III. This Court should address the uncertainty and conflicts in this area of law, rather than leave them to threaten the integrity of future elections. 16

IV. The Eighth Circuit's rationale imposes a substantial obstacle to campaign finance reform efforts. 25

CONCLUSION 29

TABLE OF AUTHORITIES

Cases:

Austin v. Michigan Chamber of Commerce, 494 U.S. 652, (1990) 18

Buckley v. Valeo, 424 U.S. 1 (1976) . . . . . passim

California Medical Assn. v. FEC, 453 U.S. 182 (1981) 22-24

California Medical Assn. v. FEC, 641 F.2d 619 (9th Cir. 1980). 22-24

Colorado Republican Federal Campaign Committee v. FEC, No. 95-489 (cert. granted Jan. 8, 1996) 11

Cousins v. Wagoda, 419 U.S. 477 (1975) 19, 22, 23

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994) . . 11, 15

FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) 18

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 788-89 (1978) 16, 28

Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 528 (1985) 28

Kusper v. Pontikes, 414 U.S. at 57 21

National Black Police Ass'n v. District of Columbia Board of Elections and Ethics, 858 F. Supp. 257 (1994) 9

Pacific Gas & Electric Co. v. Public Utilities Comm'n, 475 U.S. 1 (1986) 21

Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972) 7

Rosario v. Rockefeller, 410 U.S. 752 (1970) 7

Romer v. Evans, 882 P.2d 1335 (Colo. 1994), *cert. granted*, 115 S. Ct. 1094 (February 21, 1995) (No. 94-1039) 10

Shrink Missouri Government PAC v. *Maupin*, 71 F.3d 1422 (1995) 11

U.S. Term Limits, Inc. v. Thornton, 115 S. Ct. 1842 (1995) 10

United States v. Auto Workers, 352 U.S. 567 (1957) 3,7

United States v. C.I.O., 335 U.S. 106 (1948) 7

Wilkinson v. Jones, 876 F.Supp. 916 (W.D. K.Y. 1995) 12

Statutes:

28 U.S.C. § 1254 1

42 U.S.C. § 1983 15

Alaska Stat. § 15.13.070 (1995) 15

Ariz. Rev. Stat. Ann. § 16-905A (1995) 12

Ark. Code Ann. § 7-6-203 (Michie 1995) 15

Cal. Government Code § 85301 (West 1995) 15

Conn. Gen. Stat. § 9-333m (1995) 12

D.C. Code § 1-1441.1 12

Del. Code. Ann. 15 § 8010 (1995) 12

Fla. Stat. Ann. § 106.08 (West 1995) 12

Ga. Code Ann. § 21-5-41 (1993) 15

Haw. Rev. Stat. § 11-204 (1995) 15

Kan. Stat. Ann. § 25-4153 (1994) 12

Ky. Rev. Stat. Ann. § 121.150 (1995) 12

La. Rev. Stat. Ann. § 18:1505.2 (West 1995) 15

Mass. Gen. Laws Ann. 55 § 7A (West 1995) 12

Mc. Rev. Stat. Ann. 21-A § 1015 (1993) 15

Mich. Comp. Laws Ann. § 169.252 (West 1995) 12

Minn. Stat. Ann. § 10A.27 (West 1995) 15

130.032, Rev. Stat. Mo. (Supp. 1995) No. 95-489 4

130.100, Rev. Stat. Mo. (Supp. 1995) . . . . . passim

Mont. Code. Ann. § 13-37-216 (Supp. 1995) 12

N. Y. Election Law 14-114 (1995) 15

Nev. Rev. Stat. § 294A.100 (1993) 15

Okla. Stat. Ann. 21 § 187.1 (West 1995) 15

1995 Ore. Laws 1 1995 Ore. Laws 1 12

R.I. Gen. Laws § 17-25-10.1 (1995) 15

S.C. Code Ann. § 8-13-1314 (Law Co-op 1995) 15

S.D. Cod. Laws § 12-25-1.1 (1995) 15

Tenn. Code Ann. § 2-10-302 (1995) 15

Ut. Stat. Ann. 17 § 2805 (1994) 15

Vt. Stat. Ann. 17 § 2805 (Supp. 1995) 15

W. Va. Code § 3-8-12 (1995) 15

Wash. Rev. Code § 42-17-640 (1995) 12

Wis. Stat. Ann. § 11.26 (West 1995) 12

Legislative Material:

S. 116, 104th Cong., 1st Sess. (1995) 14

H.R. 164 14

H.R. 2469 14

H.R. 276 14

H.R. 3566 14

H.R. 591 14

H.R. 781 14

S. 951, 103d Cong., 1st Sess. (1993) 14

Other Authorities:

$100 LIMIT INITIATIVE CAMPAIGNS: 1992/1994, CENTER FOR A NEW DEMOCRACY (1995) 13

1992 MISSOURI ANNUAL CAMPAIGN FINANCE REPORT, Missouri Ethics Commission (1993) 18

Ronald D. Michaelson, 1995 CAMPAIGN FINANCE UPDATE: LEGISLATION AND LITIGATION IN THE 50 STATES, THE DISTRICT OF COLUMBIA AND THE FEDERAL GOVERNMENT, Council of Governmental Ethics Laws (1995). 13

Constitution of the United States, Amendment I 2

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri,
and JOHN MAUPIN, Chairman, Missouri Ethics Commission, *Petitioners*,

v.

THOMAS D. CARVER, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Jeremiah W. (Jay) Nixon, Attorney General of Missouri, and John Maupin, Chairman of the Missouri Ethics Commission, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Appendix ("App.") at A-1 - A-20) will be reported at 72 F.3d 633. The opinion of the district court (App. at A-30 - A-42) is reported at 882 F. Supp. 901.

JURISDICTION

The court of appeals entered its judgment on December 19, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States. Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Section 130.100. Revised Statutes of Missouri:

Contribution Limits: There shall be the following limitations on campaign contributions:

(1) No person or committee shall make a contribution to any one candidate or candidate committee with an aggregate value in excess of:

(a) $100 per election cycle per candidate in districts with fewer than 100,000 residents;

(2) [b] $200 per election cycle per candidate, other than statewide candidates, in districts of 100,000 or more residents. For purposes of this section, "statewide candidates" refers to those candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer, and Secretary of State.

(3) [c] $300 per election cycle per statewide candidate.

(2) No person, entity or committee shall make a contribution to any other persons, entities or committees for the purpose of contributing to a specific candidate which when added together or when added together with contributions made directly to the candidate or to the candidate's committee, will have an aggregate value in excess of the limits stated in [sub]section 1.

(3) No candidate or candidate committee shall solicit or accept any contribution with an aggregate value in excess of the limits stated in this section.

(4) For purposes of this section, the term "candidate" shall include the candidate, the candidate's treasurer, and the candidate's committee and any contribution to the candidate's treasurer or candidate committee shall be deemed a contribution to the candidate.

STATEMENT

Since at least 1907, legislatures have repeatedly tried to prevent government officials and candidates for office from accepting money from those with financial interests in official action.[1] For many years, those efforts were limited to restricting contributions from corporations, labor unions, and government employees to candidates.[2] The inadequacy of those efforts was dramatically demonstrated by incidents such as the "milk fund" scandals and other equally serious abuses arising out of the 1972 presidential elections. Congress and many state legislatures reacted by enacting

---

[1] *See United States v. Auto Workers*, 352 U.S. 567, 575 (1957).

[2] *See id.* at 575-587.

broader reforms, such as federal disclosure requirements and contribution limits.

Those laws may have reduced, but they did not eliminate the public's perception that corruption results from giving money to those seeking or occupying public office. The increasing public disillusionment that was evident as the 1990's began has turned into a new wave of reform efforts. In the November 1994 general election, Missouri voters responded to that disillusionment and to the profound harm to the political process that public cynicism creates. By a vote of 74%, the citizens of Missouri enacted Proposition A, including § 130.100,[3] which is at issue here. Section 130.100 imposed for the first time limits on contributions made directly to candidates for Missouri state and local offices.[4] Where the statute challenged in *Buckley v. Valeo*[5] imposed a single, $1,000 limit in all federal campaigns, § 130.100 set limits ranging from $100 to $300, according to the size of the constituency of the office being sought.

On December 13, 1994, respondent Carver filed this suit challenging the constitutionality of the new Missouri limits. Carver, who has in the past made contributions in

---

[3] § 130.100, Rev. Stat. Mo. (Supp 1995); *see* pages 1-2, *supra*.

[4] Anticipating Proposition A, the 1994 Missouri General Assembly enacted a higher set of contribution limits, § 130.032, effective January 1995. The more restrictive limits in § 130.100 preempted the § 130.032 limits.

[5] 424 U.S. 1 (1976).

excess of the new limits,[6] named two state officials as defendants: Attorney General Jeremiah W. (Jay) Nixon and John Maupin, Chair of the Missouri Ethics Commission. Carver first obtained a temporary restraining order, then a preliminary injunction, each preventing enforcement of § 130.100.

Before ruling on permanent relief, the court held an evidentiary hearing. Carver testified as to his past contributions and future plans, and concerning independent expenditures that he had observed in ongoing elections in Springfield, Missouri, where the hearing was held.[7] His two expert witnesses, both professional campaign consultants, testified principally concerning the use and cost of television advertising by candidates.[8]

The defendants responded with testimony from voters and from their own experts. One expert testified about his studies of contribution limits, including research regarding the limits imposed by many cities in California, which include some limits lower than those imposed in Missouri.[9] Both experts provided anecdotal evidence regarding federal and state campaigns, including some in which the successful candidates voluntarily limited

---

[6] Transcript of March 31, 1995, evidentiary hearing ("Tr.") at 6-7.

[7] Tr. at 4-15, 21-28.

[8] Tr. at 30-102.

[9] Tr. at 118-133.

contributions to amounts as low as $100,[10] similar to campaigns mentioned in *Buckley*.[11]

On April 18, 1995, the district court issued an order and judgment upholding § 130.100 as constitutional and denying Carver's request for a permanent injunction.[12] The district court found that Missouri's compelling interest in preventing the perception of corruption was served by limiting campaign contributions.[13] The court held that § 130.100, with its range of limits set according to the size of the constituency, was narrowly tailored to meet the state's goals.[14] Like this Court in *Buckley*, the district court found no significant interference with respondent Carver's ability to continue associating with the political candidates of his choice.

After the district court denied Carver's post-trial motion, he sought review in the United States Court of Appeals for the Eighth Circuit. On December 19, 1995, the court of appeals reversed the decision of the district court and ordered that court to enter an injunction against enforcement of § 130.100.[15]

---

[10] Tr. at 125-33, 166-75.

[11] 424 U.S. at 21 n. 23.

[12] App. A-30 - A-42.

[13] App. A-35.

[14] App. A-37 - A-39.

[15] Both the court of appeals and Justice Thomas of this Court denied applications for stay of issuance of the mandate.

REASONS FOR GRANTING THE WRIT

I. The decision of the Eighth Circuit marks a critical moment in post-*Buckley* jurisprudence – a point at which this Court should again give direction for future campaign finance reform rather than leaving that decision to play an important role in the ongoing political debate over those reform efforts.

As reviewed in *United States v. C.I.O.*,[16] our nation has a 90-year history of attacking corruption and its appearance by restricting payments to elected officers.[17] The constitutionality of that approach to fighting corruption was repeatedly questioned.[18] But until twenty years ago this Court did not directly address the legal issue. The Court's unwillingness to accept the First Amendment arguments made in those earlier cases by the parties[19] or by dissenting justices[20] implicitly endorsed the use of

---

[16] 335 U.S. 106 (1948).

[17] *See United States v. C.I.O.*, 335 U.S. 106, 113-15 (1948); *United States v. Auto Workers*, 352 U.S. 567, 575 (1957).

[18] *United States v. C.I.O.*, 335 U.S. at 114; *United States v. Auto Workers*, 352 U.S. at 576, 588; *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 402-09 (1972).

[19] *E.g.*, *Pipefitters*, 407 U.S. at 402-09.

[20] *E.g.*, *United States v. Auto Workers*, 352 U.S. at 593-98 (Douglas, J. dissenting).

restrictions on payments to candidates as a means of alleviating the perception that public officials had sold influence to wealthy contributors under the guise of receiving campaign contributions.

This Court has reached the question of the constitutionality of restrictions on campaign contributions made by individuals directly to candidates only once, in *Buckley v. Valeo*. The Court's analysis there of the precise constitutional issue posed by limits on campaign contributions was a sufficient first step. By upholding a $1,000 limit, the Court provided states with a safe harbor for adopting a similar limit. The problem with the Court's skeletal approach is that is does not provide any clear way to evaluate contribution limits that are lower than those approved by the Court. Thus, as states and cities have become inclined to further restrict the amount of money that each individual can contribute to campaigns for offices involving fewer constituents, the need for some clearer guidance arises.

Rather than give specific guidance, in *Buckley* this Court declined to apply undue judicial scrutiny to how Congress had responded to the problem of the public's perception of corruption.[21] While the FECA limits remained unchanged, while states adopted limits largely in line with the FECA limits, while inflation did not unduly diminish the value of the $1,000 contribution allowed in presidential and other federal races, and while the requirement for legislative deference remained in place, the absence of concrete guidance was not an important concern.

For the judiciary, this need for guidance has now become critical. The decisions in this case demonstrate that

---

[21] *See* 424 U.S. at 30.

the lower courts need to know precisely what First Amendment rights of contributors are implicated and how contributors' claims are to be evaluated by the courts. The U.S. District Court for the District of Columbia already faces that question.[22] It will continue to arise,[23] forcing the lower courts to divine from the language and holding in *Buckley* whether the door through which money is handed to politicians can ever be closed far enough to prevent payments of something less than $1,000 per election.

The need for clarification is perhaps even more critical in the political arena. As discussed in part II below, changing contribution limits has become a national political issue. The Eighth Circuit has created a powerful new tool for opponents of lower limits: an endorsement of the cries that although no one is to be prevented from speaking out in favor of electing their preferred candidate, someone's constitutional rights will be infringed merely because they are no longer able to hand over large amounts of money to the candidates themselves. By ducking behind the Eighth Circuit's definition of contributors' constitutional rights, legislators facing votes on imposing lower contribution limits will be able to avoid the criticisms that they are protecting their own purses.

---

[22] *See National Black Police Ass'n v. District of Columbia Board of Elections and Ethics*, 858 F. Supp. 257 (1994). The D.C. case is scheduled for trial in February 1996. A comparable Oregon law (*see* p. 12, *infra*) is also being challenged, but in state court and on the basis of that state's more restrictive version of the First Amendment.

[23] *See* pp. 11-12, *infra*, for discussion of other states and municipalities that have adopted limits lower than those established in the FECA.

This case demands attention much like the movements that led to the initiatives reviewed by this Court in *Romer*[24] and *Thornton*.[25] Each was part of a widespread, grassroots fight for something that much of the public (although apparently less than a majority of legislators) deemed to be a critical need. Just as the Court decided to hear those cases without waiting for a conflict to emerge among the lower courts, it should intervene here to ensure that the political debate is properly framed in terms of the policy preferences of the electorate or its representatives, and not in terms of the constitutional propriety of the particular restriction on campaign contributions. So long as the constitutional validity of any restriction below that sustained in *Buckley* remains in question, the political process will suffer a needless and harmful distraction that only this Court can dispel.

II. Missouri's law exemplifies the kind of limits being debated throughout the United States.

Since it decided *Buckley v. Valeo* nearly 20 years ago, this Court has not returned to the issue of the extent to which the states may go beyond the $1,000 FECA limit in their efforts to eliminate the perception of corruption that arises when individuals give hundreds of dollars to candidates for office to spend as they wish. The Court has approached the edges of that question more than once while dealing with a variety of issues, such as restrictions on

---

[24] *Romer v. Evans*, 882 P.2d 1335 (Colo. 1994), *cert. granted*, 115 S. Ct. 1094 (February 21, 1995) (No. 94-1039).

[25] *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995).

corporate spending to oppose ballot initiatives.[26] But as to contributions to candidates, *Buckley* still stands alone. In the wake of the Eighth Circuit decision, the ambiguities and uncertainties *Buckley* leaves will distort the political movements and elections of the 1990's.

Relying on *Buckley*, many states and local governments in the 1970's and 1980's followed the lead of Congress in the FECA and adopted their own contribution limits. Some adopted the same $1,000 limit that Congress had chosen. Others set limits that far exceeded the FECA amounts. And some states, including Missouri, enacted disclosure statutes, but did not immediately follow the congressional lead in imposing contribution limits.

The wave of campaign finance reform that we see in the 1990's includes stricter disclosure requirements and new efforts at restricting expenditures.[27] It also includes a nationwide push to impose new, or in some cases reduced, limits on contributions made directly to candidates. Missouri's new law is just one result of that push. Two other states already have limits comparable to those that the Eighth Circuit invalidated: Montana and Oregon now

---

[26] Most recently, this Court granted the petition for writ of certiorari in *Colorado Republican Federal Campaign Committee v. FEC*, No. 95-489 (cert. granted Jan. 8, 1996), a case involving expenditures by political parties.

[27] *See, e.g., Shrink Missouri Government PAC* v. *Maupin*, 71 F.3d 1422 (1995); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994).

preclude some contributions as low as $200.[28] The District of Columbia has gone further, imposing some limits as low as $50.[29] Others have adopted comparable limits for some campaigns, such as a $250 limit in some Arizona campaigns,[30] and a $500 limit in Washington.[31] The legislatures in eight other states have also adopted limits that are lower than the $1,000 limit upheld in *Buckley*, although higher than the limits in § 130.100.[32]

The restrictions in Missouri, Montana, Oregon, D.C., Arizona, and Washington have a common origin: the people, frustrated by the unwillingness of incumbent politicians to restrict their own ability to harvest funds from moneyed interests, enacted those limits by initiative. They were often passed by overwhelming majorities, such as 63%

---

[28] Mont. Code. Ann. § 13-37-216 (Supp. 1995); 1995 Ore. Laws 1, 3.

[29] D.C. Code § 1-1441.1.

[30] Ariz. Rev. Stat. Ann. § 16-905A (1995).

[31] Wash. Rev. Code § 42-17-640 (1995).

[32] Conn. Gen. Stat. § 9-333m (1995) ($250); Del. Code. Ann. 15 § 8010 (1995) ($600); Fla. Stat. Ann. § 106.08 (West 1995) ($500); Kan. Stat. Ann. § 25-4153 (1994) ($500); Mass. Gen. Laws Ann. 55 § 7A (West 1995) ($500); Mich. Comp. Laws Ann. § 169.252 (West 1995) ($100); Wis. Stat. Ann. § 11.26 (West 1995) ($250). Kentucky's $100 limit, Ky. Rev. Stat. Ann. § 121.150 (1995), was held invalid on equal protection grounds not applicable here. *See Wilkinson v. Jones*, 876 F.Supp. 916 (W.D. Ky. 1995).

in Montana, 72% in Oregon, 73% in the District of Columbia, and 74% in Missouri.[33]

Initiative efforts have not been uniformly successful. In the face of a well-financed campaign reportedly sponsored by such powerful, self-interested parties as the Denver Chamber of Commerce, the Realtors, and the Tobacco Institute, an initiative was defeated in Colorado.[34] The citizens fighting for lower Colorado contribution limits have not given up. But the Eighth Circuit's decision adds a new arrow to their opponents' quiver in the battle against this year's version of that initiative. The Eighth Circuit decision will also be used to attack initiative drives now underway in Alaska (for a $500 limit applicable to all campaigns),[35] Arkansas ($100), California (two different initiative efforts, each setting some limits as low as $100), and Maine (for limits as low as $250).

The need to use the initiative process is shown by the failure of legislative efforts, such as the attempt to impose a $250 limit in Connecticut and a $500 limit for some North Carolina candidates.[36] And at the federal level,

---

[33] $100 LIMIT INITIATIVE CAMPAIGNS: 1992/1994, Center for a New Democracy (1995)

[34] *Id.*

[35] Legislation has also been introduced in Alaska that is substantially similar to the initiative proposal.

[36] Ronald D. Michaelson, 1995 CAMPAIGN FINANCE UPDATE: LEGISLATION AND LITIGATION IN THE 50 STATES, THE DISTRICT OF COLUMBIA AND THE FEDERAL GOVERNMENT, Council of Governmental Ethics Laws (1995).

although six bills lowering the FECA limit were introduced in the 103d Congress and two have been introduced in the 104th,[37] none of those has passed. Such bills will continue to be introduced in Congress, and bills and petitions will be pursued in the states -- and their opponents will point to the Eighth Circuit decision as a compelling argument against passage.

That argument will be made in cities as well as in states and in Congress. Many cities have adopted their own contribution limits comparable to those in § 130.100. They range from Springfield, Missouri, with a population 140,000, which has a $75 limit,[38] to the City of San Diego, California, with a population of over 1 million, which prohibits contributions over $250.[39]

That argument will be made not just in opposition to limits that are below $1,000, but also in support of efforts to raise or eliminate limits in the seventeen states

---

[37] H.R. 164 ($500 limit), H.R. 276 ($500), H.R. 781 ($100), H.R. 2469 ($500), H.R. 3566 ($500), S. 951 ($100), 103d Cong., 1st Sess. (1993); H.R. 591 ($500), S. 116 ($100), 104th Cong., 1st Sess. (1995).

[38] Tr. at 10.

[39] Tr. at 129.

that have adopted the amount sustained in *Buckley*.[40] Implicit in the Eighth Circuit rationale in this case is the argument that nothing below $1,000 *in 1974 dollars* is permissible.[41] The implication of the Eighth Circuit's decision is that even the FECA limits, constitutional in 1976, are now subject to challenge. If that rationale is allowed to stand, at least 31 states and many more cities

---

[40] *See* Alaska Stat. § 15.13.070 (1995); Ark. Code Ann. § 7-6-203 (Michie 1995); Cal. Government Code § 85301 (West 1995); Ga. Code Ann. § 21-5-41 (1993); La. Rev. Stat. Ann. § 18:1505.2 (West 1995); Me. Rev. Stat. Ann. 21-A § 1015 (1993); N. Y. Election Law 14-114 (1995); Okla. Stat. Ann. 21 § 187.1 (West 1995); S.C. Code Ann. § 8-13-1314 (Law Co-op 1995); Tenn. Code Ann. § 2-10-302 (1995); Ut. Stat. Ann. 17 § 2805 (1994); Vt. Stat. Ann. 17 § 2805 (Supp. 1995); W. Va. Code § 3-8-12 (1995). Two states impose a limit of $2,000 per election cycle -- the practical equivalent of the $1,000 per election limit: Haw. Rev. Stat. § 11-204 (1995), and Nev. Rev. Stat. § 294A.100 (1993). Three states impose limits on a "per year" basis, which as a practical matter means that for many candidates there is a $1,000 or lower limit: Minn. Stat. Ann. § 10A.27 (West 1995); R.I. Gen. Laws § 17-25-10.1 (1995); S.D. Cod. Laws § 12-25-1.1 (1995).

[41] *See* App. A-20 - A-21, citing *Day v. Holahan*, 34 F.3d 1356, 1365 (8th Cir. 1994).

can expect constitutional challenges.[42] And those challenges will have to be decided in the absence of guidance from this Court as to what the *Buckley* precedent means.

III. This Court should address the uncertainty and conflicts in this area of law, rather than leave them to threaten the integrity of future elections.

A. Missouri's compelling interest in eliminating the ~~perception~~ of corruption is sufficient to justify its contribution limits, just as that interest was sufficient to justify the FECA limits at issue in *Buckley*. But there are additional, broader interests that demand the attention of this Court in considering whether to grant certiorari: preserving "the individual's citizen's confidence in government" and "preserving the integrity of the electoral process."[43] Citizens' confidence in elections is undermined when the election rules are unclear or changing. An election should be run like an athletic contest: the rules are

---

[42] The lawsuits that will be filed challenging the new campaign reforms will be based on 42 U.S.C. § 1983, which means that each state or city defending the particular limit it chose will be exposed to substantial attorneys fees in the event the lower courts conclude, as did the Eighth Circuit, that choice was unconstitutional. The Court should resolve the issue presented here in order to protect those entities from significant financial exposure, which, at least in the case of initiatives, the public officials in those jurisdictions are helpless to avoid.

[43] *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 788-89 (1978).

established before the race begins, and they remain the same throughout. Otherwise, the victor may not be the fastest runner, but the runner who is best able to take advantage of, or even manipulate through timely lawsuits, the changes in the rules.

The 1996 Missouri elections will necessarily take place in an atmosphere of uncertainty. The rules on campaign contributions have changed four times in the last 15 months. Elections in other places and at other times need not be subject to that kind of uncertainty. Yet that is inevitable, if the Eighth Circuit's rationale is not addressed by this Court.

B. This Court has not addressed the critical question that follows from its holding in *Buckley*: what level of contribution must be permitted in order to protect freedom of political association, where contributors are fully able to speak independently? Nor does *Buckley* define criteria by which individuals' asserted right to make large contributions is to be judged.

In *Buckley*, this Court point to the obvious: that two First Amendment . . . freedoms are implicated . . . by campaign finance reform, freedom of speech and freedom of association. The Court recognized that freedom of speech is the value at issue when there is a limit on campaign expenditures -- independent or otherwise. With regard to contribution limits, the Court in *Buckley* also addressed freedom of speech. But the Court did so principally with regard to the ability of *candidates* to speak, not the ability of *contributors* to speak.

Candidates' freedom of speech would not be an issue here even if respondent Carver were himself a candidate. The district court declined Carver's invitation to find that

Missouri candidates cannot "amass[] the resources necessary for effective advocacy."[44] The court of appeals did not say that the district court's conclusion in that regard was clearly erroneous. And in the months since the district court lifted its preliminary injunction, Missouri candidates have proven that they can raise record amounts despite the new limits [45] -- just as the candidates for federal office proved by repeatedly setting new fundraising records despite the dire predictions of some members of Congress who urged higher federal limits in 1974.

In *Buckley* this Court did not ignore the interests of persons other than candidates. In fact, the Court specifically protected noncandidates' freedom of speech -- but in the context of independent expenditures.[46] And since *Buckley*, this Court has reiterated that strict scrutiny must be given to any attempt to restrict the ability of Carver and other citizens to speak independently, either individually or

---

[44] 424 U.S. at 21.

[45] For example, in the 1992 election, the two major party candidates for Missouri Secretary of State collectively spent less than $400,000 on their primary and general election races. 1992 MISSOURI ANNUAL CAMPAIGN FINANCE REPORT, Missouri Ethics Commission (1993) at 1. The 1995 campaign finance reports of the declared major party candidates in the 1996 election show that they together have already raised more than $500,000, all in amounts of $300 or less.

[46] 424 U.S. at 48.

through some organized group.[47] But Missouri law imposes no restrictions on Carver's independent expenditures, and the evidence before the district court showed that as a practical matter Carver is still able to speak, even through the media, to solicit votes for those he wishes to see in public office.[48]

This Court's discussion in *Buckley* of the rights of *contributors* began not with mention of freedom of speech, but with the recognition that

> the primary First Amendment problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's *freedom of political association*.[49]

The Court then suggested a two-part analysis: (1) Is there "a 'significant interference' with protected rights of political association"? And if so, (2) has the state "demonstrate[d] a sufficiently important interest and employ[ed] means closely drawn to avoid unnecessary abridgment of associational freedoms"?[50] Without even suggesting that there was a particular basis for the selection of the $1,000 figure, the Court sustained it. In *Buckley*, then, this Court

---

[47] *See, e.g., Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 655 (1990); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 251-52 (1986).

[48] *See* Tr. at 24-25, 98-99.

[49] 424 U.S. at 24-25 (emphasis added).

[50] 424 U.S. at 25, *quoting Cousins v. Wagoda*, 419 U.S. 477, 488 (1975).

held a $1,000 contribution, among the many millions collected by presidential hopefuls, was enough to manifest a contributor's association with the candidate -- and that precluding a $1,001 contribution to a presidential candidate constituted only "a limited effect on First Amendment freedoms."[51]

Consistent with its focus on how contribution limits affect candidates' freedom of speech, this Court in *Buckley* stated a criterion for evaluating whether *candidates'* rights are infringed by the imposition of contribution limits. Thus, the limits are unconstitutional if they are so low that they prevent candidates from amassing the resources they need to campaign effectively for public office. But this Court did not say when *contributors'* constitutional rights are impermissibly infringed where they are not subject to expenditure restrictions. That is the question the Court faces here.

In finding its answer for that question, the Eighth Circuit drew guidance from this Court's reaction in *Buckley* to the argument that Congress should have chosen $2,000 rather than $1,000: "Such distinctions in degree become significant only when they can be said to amount to differences in kind."[52] What this Court meant by that statement is somewhat obscure. Implicitly, the Court indicated that a fifty per cent reduction from $2,000 did not constitute a "difference in kind" that would be "significant." Elsewhere the Court referred to the voluntary use of $100 limits,[53] without any suggestion that such limits were

---

[51] 424 U.S. at 29.

[52] 424 U.S. at 30.

[53] 424 U.S. at 21 n. 23.

anything more than another "difference in degree." And the Court affirmed that the legislature -- not the courts -- had to decide precisely where to draw the line.[54]

The Eighth Circuit tried to find some substance in the two cases cited by this Court following its "difference in kind" language: *Kusper v. Pontikes*[55] and *Rosario v. Rockefeller*.[56] If those decisions addressed statutes that merely differed in the amount of lead time required for changing party affiliation before closed primaries (eleven months in *Rosario*; twenty-three months in *Kusper*), those cases would manifest only a "difference in degree." But they presented "differences in kind" because while the statute at issue in *Rosario* permitted voters to participate in annual primary elections, the law at issue in *Kusper* barred voters from participating in some primary elections.[57]

The FECA limits would differ "in kind" from an absolute prohibition on contributions to candidates. Such a prohibition would violate contributors' free speech rights because it would bar "the speech element of a contribution -- the message of support for a candidate."[58] But mere differences in the amount that can be contributed do not easily fit under the "differences in kind" label, particularly

---

[54] 424 U.S. at 21.

[55] 414 U.S. 51 (1973).

[56] 410 U.S. 752 (1970).

[57] *Kusper v. Pontikes*, 414 U.S. at 57.

[58] *Pacific Gas & Electric Co. v. Public Utilities Comm'n*, 475 U.S. 1, 25 n. 3 (1986) (Marshall, J. concurring).

because the elements of speech and association are "only indirectly related to the size of the contribution."[59] This Court should consider this case in order to explain at what point that indirect relation is sufficient to demand constitutional scrutiny beyond that which applies to economic regulation.

C. When compared to the decision of the Ninth Circuit in *California Medical*,[60] the decision of the Eighth Circuit in this case demonstrates that courts can differ over not just the criteria but also the level of scrutiny to be applied in evaluating claims that particular levels of contribution limits are unconstitutional. The Eighth and Ninth Circuits were not the only courts to consider that question, of course. In many of the campaign reform cases decided since *Buckley*, the courts have struggled to determine what level of scrutiny is to be applied. That struggle even divided this Court when it heard the *California Medical* case.[61] The source for guidance is always the same: *Buckley v. Valeo*. But without further guidance from this Court, lower courts will continue to disagree over what *Buckley* means.

In *Buckley*, this Court at various points used terms such as "closest scrutiny" (424 U.S. at 25), "rigorous standard of review" (*id.* at 29), and "exacting scrutiny" (*id.* at 44). But the Eighth Circuit is wrong in claiming that the Court in using those words expressly endorsed the use of

---

[59] *Id.*

[60] *California Medical Assn. v. FEC*, 641 F.2d 619 (9th Cir. 1980).

[61] *California Medical Assn. v. FEC*, 453 U.S. 182, 197 (1981).

the same degree of scrutiny for both contribution limits and expenditure limits. The Court quoted language from *Cousins v. Wigoda*[62] for the proposition that some form of strict scrutiny may apply in deciding free association claims, but in doing so implied -- correctly -- that such scrutiny would apply only where there was a "'significant interference' with protected rights of political association." The Court's language and holding stand for the proposition that anything that does not amount to a "'significant interference' with protected rights of political association"[63] can be justified by something less than "a sufficiently important interest," and that the legislature need not employ "means closely drawn to avoid unnecessary abridgment of associational freedoms" in imposing such a restriction.[64]

The holdings in this case demonstrate that what constitutes a "significant interference" cannot easily be decided by reference to *Buckley*. Precluding payments of more than $1,000 even to a candidate for the presidency did not significantly interfere with a contributor's freedom to associate with the candidate. But what does constitute such interference? Justice Marshall, writing for the plurality of this Court in *California Medical*, gave guidance, but did not authoritatively answer that question, when he observed that a limitation that does not preclude independent expenditures "does not restrict the ability of individuals to engage in protected political speech."[65]

---

[62] 419 U.S. 477, 488 (1975).

[63] 424 U.S. at 25.

[64] *Id.*, quoting *Cousins*, 419 U.S. at 548.

[65] 453 U.S. at 199-200 n. 20.

Until the Eighth Circuit ruled in this case, the principal holding as to the level of scrutiny to be applied was that of the Ninth Circuit in *California Medical*. The Ninth Circuit there held that restrictions on contributions, unlike restrictions on expenditures, did not merit strict scrutiny -- a conclusion that it could reach either by holding that the restrictions did not "significantly interfere" with associational freedoms, or by holding that laws restricting contributions and those limiting campaign expenditures are subject to differing levels of scrutiny.[66] The plurality of this Court agreed, endorsing the proposition that Congress needs only "reasonably have concluded" that its enactment would attack a recognized ill.[67] In other words, the plurality would subject contribution limits to a rational basis standard, not to strict scrutiny.

The *California Medical* decisions of both the court of appeals and this Court were guided by this Court's action in *Buckley*. There the Court reached diverse answers to related but distinctive legal questions: Can the legislative branch limit contributions made directly to candidates?[68] And, can Congress limit the ability of groups to independently expend funds in support of candidates?[69] The Court answered the first question (the one implicated here), "Yes." It answered the second question, "No."

---

[66] *California Medical*, 641 F.2d at 624.

[67] 453 U.S. at 199-200 n. 20 (Marshall, J. plurality).

[68] Part I-B of the Court's decision, 424 U.S. at 23-38.

[69] Part I-B of the Court's decision, 424 U.S. at 39-51.

It seems obvious that limitations on independent expenditures "impose far greater restraints on the freedom of speech and association than do . . . contribution limitations."[70] And it seems logical, as the Ninth Circuit and the plurality of this Court held, that the lesser restraints imposed by contribution limits are subject to a lower level of scrutiny. The Eighth Circuit's express contrary holding will provide a point of political and judicial dispute each and every time a limit on contributions is proposed, enacted, enforced, or challenged.

IV. The Eighth Circuit's rationale imposes a substantial obstacle to campaign finance reform efforts.

A. The Eighth Circuit has created new rules regarding the justification required for legislation that affects the ability to make payments directly to candidates for public office -- rules that will, in at least three notable respects, severely inhibit the states', cities', and citizens' ability to attack the perception of public corruption.

The first is the Eighth Circuit's imposition of an evidentiary requirement that is entirely absent from *Buckley*. There this Court held that the government has a compelling interest in preventing even the appearance of corruption, that the government's interest is served by contribution limits, and that the precise level of the limits was something to be determined by the legislative branch. This Court then sustained the FECA limits without citing anything in the legislative record to explain the selection of $1,000 or its imposition on everything federal campaign. In fact, there is nothing in the FECA's history that explains the selection of $1,000 as anything but an arbitrary extraction from an

---

[70] *Id.* at 44.

entirely different statute. After *Buckley*, states and local governments followed the federal model. They adopted their own limits based on determinations as to the needs of their particular circumstances, but without specific justification for the particular limit chosen, whether it was above, equal to, or below the FECA amount.

The Eighth Circuit decision has left governments throughout the United States without any idea as to what record they should have created as justification for their existing limits, or what record (if any) will justify the changes now under consideration. The history of the FECA would not meet the Eighth Circuit's standards. And if the extensive legislative history of the FECA did not contain what the Eighth Circuit now demands, how can states and local governments, which rarely keep legislative histories, be expected to comply?

States need to know what standard their enactments of contribution limits must meet: the low standard required of Congress in *Buckley*, or the much higher standard imposed by the Eighth Circuit here. And they need to know now, *before* the actions of their legislators or their voters affect current or future elections and draw lawsuits, such as this one, that result in alternating periods of new and old contribution limits.

B. The Eighth Circuit then imposes a rigid, federally-created line beyond which contribution limits may not pass. The use of such a line is inconsistent with what the "strict scrutiny" the Eighth Circuit applied would actually require: the tailoring of limits by the states to address their particular needs.

The Eighth Circuit has attributed to this Court the holding that legislatures can restrict only "large," and not

some broader range of contributions.[71] Assuming that is true, there must be some method of determining just what is a "large" contribution. This Court in *Buckley* implicitly called a $1,001 contribution "large," although it provided no criteria for defining that word. The Eighth Circuit has similarly reached its goal without providing any method of determining what is "large." Moreover, by suggesting that inflation is to be taken into account in determining what constitutes a large contribution today,[72] the Eighth Circuit has opened the door to claims that even $1,001 may no longer be a large contribution. In the Eighth Circuit's view, some abstract, monetary use of the word, "large," has gained constitutional significance in light of *Buckley*.

The Eighth Circuit ignored the compelling argument that defining "large" in the context of campaign contributions requires some element of proportionality. This Court in *Buckley* affirmed that a contribution of $1,001 is large in a presidential race in which tens of millions of dollars are spent. Yet, according to the Eighth Circuit, a state cannot find that $100 is a large contribution to a candidate for school board, or that $200 is a large contribution to a legislator -- despite the fact that such a contribution may well constitute a substantial portion of the total funds needed for such a race.

The Eighth Circuit's failure to include proportionality in its analysis runs headlong into a critical part of the strict scrutiny analysis that the court said applies to contribution limits: the need to tailor contribution limits to meet the particular interest being served. Although this Court permitted the use of a single limit for all federal

---

[71] App. A-11-A-15, A-17, A-24, A-26-A-27.

[72] App. A-20.

campaigns, regardless of the size of the constituency, it did not limit the states and the cities to the same blunderbuss approach. By revisiting its *Buckley* holding and reconsidering the conclusion that Missouri's varying limits are not sufficiently narrow, this Court could both strengthen the requirement that restrictions on speech be narrowly tailored and at the same time ensure that the states remain functioning "laboratories" that can perform their assignment in the "science of experiments" that is our federal system.[73]

C. Finally, the Eighth Circuit's decision limits the ability of the people to use the initiative process to declare what they are better able than their elected representatives to decide: the point at which payments to politicians raise the perception of corruption. The Eighth Circuit is clearly wrong in suggesting[74] that legislators are a better judge of this issue than the electorate. The electorate is particularly well suited to judge what contributions appear to provide undue access to a candidate. Elected officials are almost certainly going to underestimate the likely effect of a particular contribution because it is in their interest to be able to obtain at least some funds from large contributors. Thus, the electorate's judgment in this case was entitled to substantially greater respect than it was accorded by the court of appeals.

This Court has recognized that states have a compelling interest in eliminating not only the reality, but

---

[73] *Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 528, 545 (1985).

[74] App. A-28-A-29.

even the perception of corruption.[75] The Eighth Circuit never says what evidence of the perception of corruption would be sufficient to support any particular contribution limit. If the votes of Missourians do not show that there is a perception of corruption when individuals hand checks of $100, $200, or $300 to officeholders, what would? The Eighth Circuit has cast doubt on the competence and legal ability of the people not only to decide for themselves the point at which they perceive corruption, but on their ability to make any decision that even arguably affects First Amendment rights. This Court should confirm the availability in the states of the initiative process.

CONCLUSION

For the reasons stated above, this Court should grant the petition for writ of certiorari.

---

[75] *Buckley*, 424 U.S. at 27; *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. at 787-89.

Respectfully submitted.

Of counsel:

CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 Eye Street
Washington, D.C. 20006

JEREMIAH W. NIXON
Attorney General

JAMES R. LAYTON*
Chief Deputy Atty. General

AMY E. RANDLES
CYNTHIA A. BARRETT
STEPHEN R. MARTIN II
Assistant Attorneys General

P.O. Box 899
Jefferson City, MO 65102
(314) 751-3321

* *Counsel of Record*

Counsel for Petitioners

APPENDIX

TABLE OF CONTENTS

Thomas D. Carver v. Jeremiah W. Nixon, Attorney General, State of Missouri; John Maupin, Chair, Missouri Ethics Commission, United States Court of Appeals for the 8th Circuit, Case No. 95-2608, Opinion of the 8th Circuit A-1

Thomas D. Carver v. Jeremiah W. Nixon, et al, United States District Court, Western District, Southern Division, Case No. 94-3505-CV-S-4, Order of the Southern District A-30

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 95-2608

Thomas D. Carver,	*	
	*	
Appellant,	*	
	*	Appeal From the
	*	United States
	*	District Court for
	*	the Western
	*	District of Mo.
v.	*	
	*	
Jeremiah W. Nixon, Attorney General, State of Missouri; John Maupin, Chair, Missouri Ethics Commission,	*	
	*	
	*	
	*	
	*	
Appellees.	*	

Submitted: September 13, 1995
Filed: December 19, 1995

Before BOWMAN ROSS, and JOHN R. GIBSON, Circuit Judges.

JOHN R. GIBSON, Circuit Judge.

The campaign contribution limits in Proposition A, Mo. Ann. Stat. § 130.100 (Vernon Supp. 1995), adopted by initiative, were declared constitutional by the district court, which refused to enjoin their implementation. Carver v. Nixon, 882 F. Supp. 901 (W.D. Mo. 1995). Thomas D. Carver appeals, arguing that the district court erred in ruling that the Proposition A contribution limits for state and local candidates did not violate a contributor's freedoms of speech and association under the First Amendment. We conclude that section 130.100 is unconstitutional and reverse the judgment of the district court.

In the spring of 1994, the Missouri General Assembly passed Senate Bill 650, adopting campaign contribution limits to become effective January 1, 1995. See Mo. Rev. Stat. § 130.032 (1994). Voters approved Proposition A at the November 8, 1994 election. Proposition A adopted lower contribution limits and became effective immediately.[1]

---

[1] Proposition A provides:

> There shall be the following limitations on campaign contributions:
>
> (1) No person or committee shall make a contribution to any one candidate or candidate committee with an aggregate value in excess of:
>
> (a) $100 per election cycle per candidate in districts with fewer than 100,000 residents[.]
>
> (2) [sic] $200 per election cycle per candidate, other than statewide candidates, in districts of 100,000 or more residents. For purposes of this

The Missouri Attorney General issued an opinion stating that, although both Proposition A and Senate Bill 650 "concern campaign finance, they are not irreconcilably inconsistent." Missouri Ethics Commission, Op. Atty. Gen. No. 218-94 (Dec. 6, 1994), at 4. The Attorney General stated that the two provisions stand together in regulating

---

(footnote cont.)

section "stateside candidates" refers to those candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer and Secretary of State.

(3) [sic] $300 per election cycle per statewide candidate.

(2) No person, entity or committee shall make a contribution to any other persons, entities or committees for the purpose of contributing to a specific candidate which when added together with contributions made directly to the candidate or to the candidate's committee, will have an aggregate value in excess of the limits stated in section 1.

(3) No candidate or candidate committee shall solicit or accept any contribution with an aggregate value in excess of the limits stated in this section.

(4) For purposes of this section the term "candidate" shall include the candidate, the candidate's treasurer, and the candidate's committee and any contribution to the candidate's treasurer or candidate committee shall be deemed a contribution to the candidate.

Mo. Ann. Stat. § 130.100.

campaign finance, and to the extent there is a conflict between specific provisions of the statutes, the more restrictive provision prevails. Id. Thus, the lower campaign contribution limits of Proposition A control.[2]

The contribution limits in Proposition A are limits "per election cycle per candidate."[3] Mo. Ann. Stat. § 130.100. The statute provides that no person or committee shall make a contribution to any one candidate or candidate committee with an aggregate value in excess of: (a) $100 for candidates in districts with fewer than 100,000 residents; (b) $200 for other than statewide candidates in districts of 100,000 or more residents; and (c) $300 for statewide candidates. Mo. Ann. Stat. § 130.100. Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer, and Secretary of State are enumerated as statewide candidates for purposes of the section. Mo. Ann. Stat. § 130.100(2) [sic].

Senate Bill 650 imposed limits for each election. Thus, on an election cycle basis, the Senate Bill 650 limits are twice the amount enumerated in the text of Senate Bill 650. See Mo. Rev. Stat. § 130.032.1. Contributions are

---

[2] Other provisions of Senate Bill 650 and Proposition A were the subject of litigation in Shrink Missouri Government PAC v. Maupin, 892 F. Supp. 1246 (E.D. Mo. 1995). We heard the appeal in that case on the same day as this appeal. See Shrink Mo. Gov't PAC v. Maupin, No. 95-2857, slip. op. (8th Cir. Dec. 19, 1995).

[3] An election cycle is "the period of time from general election for an office until the next general election for the same office." Mo. Stat. Ann. § 130.011 (Vernon Supp. 1995). Thus, an election cycle includes the primary and general election.

limited to $1,000 per election for Governor and other statewide offices, as well as for candidates in districts with a population of at least 250,000. Mo. Rev. Stat. §§ 130.032.1(1), (6). There is a $500 per election contribution limit for candidates for State Senate, and for any office in electoral districts with a population between 100,000 and 250,000. Mo. Rev. Stat. §§ 130.032.1(2), (5). Contributions are limited to $250 per election for candidates for State Representative and for offices in districts of a population less than 100,000. Mo. Rev. Stat. §§ 130.032.1(3), (4).

Carver brought this action to enjoin enforcement of Proposition A. He asserted that Proposition A restricted his ability to make contributions in violation of his rights of free speech and association. He also argued that the limits are so low as to unconstitutionally interfere with his ability to support candidates and to communicate with potential supports for fundraising purposes. He argued that Proposition A is not narrowly tailored to meet the State's interests of avoiding corruption or the appearance of corruption, and will not prevent wealthy special interests from opposing candidates.

After hearing evidence and receiving briefs, the district court denied the injunction. Carver, 882 F. Supp. at 902. The court recognized that Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), governed the issues. Carver, 882 F. Supp. at 903. The court read from Buckley that "a major purpose of the First Amendment is to protect political speech," and that "[l]imitations on these rights are permissible where a compelling state interest is served, if the limitations imposed are narrowly tailored to serve that interest." Carver, 882 F. Supp. at 903-04. The court observed that the Supreme Court has recognized that governments have a compelling interest in preventing

corruption and the appearance of corruption that may result from individuals making large contributions to candidates. Id. at 904 (citing Buckley, 424 U.S. at 25-27).

The district court ruled that the Proposition A limits were not so low as to be an unconstitutional restriction of First Amendment rights. Id. at 904-05. The court held that "the law is tailored narrowly enough to help the state meet its goals of eliminating some of the means of corruption and of avoiding the appearance of corruption." Id. at 906. The court observed that Proposition A does not prevent candidates from spending their own money on their campaigns.[4] Id. The court stated that, although Proposition A does not address all of the problems related to campaign finance, it is a positive step toward eliminating political corruption, even if it is not comprehensive. Id. It may not close all of the loopholes, but that does not make it unconstitutional. Id. Carver appeals.

---

[4] This issue was not before the district court. However, the district court in Shrink Missouri Government PAC, 882 F. Supp. at 1251, addressed the applicability of Proposition A to the candidate's own contributions. The district court found that when Proposition A and Mo. Rev. Stat. § 130.011(12)(a) (1994) are read together, the statute limits a candidate's ability to spend his own money on his campaign. Id. Finding that Buckley prohibits a limit on the amount a candidate may contribute to his own campaign, the district court enjoined the application of section 130.011(12)(a) to the Proposition A contribution limits. Shrink Mo. Gov't PAC, 882 F. Supp. at 1251. We affirmed this holding in Shrink Missouri Government PAC v. Maupin, No. 95-2857, slip. op. at 3-4.

I.

Carver argues before us, as he did in the district court, that the Proposition A contribution limits restrict his First Amendment rights to political communication and association. He contends that, because the Proposition A limits burden fundamental First Amendment rights, they are subject to strict scrutiny and do not serve a compelling state interest. The State argues that we should apply an intermediate standard of review, but even if we apply strict scrutiny, the Proposition A limits are narrowly tailored to address a compelling state interest.

The Supreme Court identified the interests implicated by contribution limits in Buckley, 424 U.S. at 14 (citations omitted):

> [C]ontribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. . . . The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." . . . "[T]here is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of government affairs, . . . of course includ[ing] discussions of candidates . . . ."

"[C]ontribution and expenditure limitations impose direct quantity restrictions on political communication and

association by persons, groups, candidates, and political parties . . . ." Id. at 18.

In view of these fundamental interests, the Court has instructed that campaign contribution limits are "subject to the closest scrutiny." Id. at 25 (quoting NAACP v. Alabama, 357 U.S. 449, 460-61 (1958)). Under this standard, "a significant interference with protected rights of political association may be sustained" only when the State can demonstrate "a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." Id. (quotations omitted) (citing Cousins v. Wigoda, 419 U.S. 477, 488 (1975); NAACP v. Button, 371 U.S. 415, 438 (1963); Shelton v. Tucker, 364 U.S. 479, 488 (1960)).

After identifying the interests and the applicable level of review, the Court in Buckley, 424 U.S. at 58-59, upheld the constitutionality of the $1,000 contribution limit for federal elected offices. The Court reasoned that the $1,000 contribution limit focused precisely on the problem of large campaign contributions and, therefore, was narrowly tailored to the goal of limiting corruption and the appearance of corruption. Id. at 26-28. The Court pointed out that a contribution limit "entails only a marginal restriction upon the contributor's ability to engage in free communication" and does not materially undermine "the potential for robust and effective discussion of candidates and campaign issues . . . ." Id. at 20-21, 29. The Court characterized a contribution as only "a general expression of support for the candidate and his views," explaining that "the transformation of contributions into political debate involves speech by someone other than the contributor." Id. at 21.

The Court recognized that "contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." Id. at 21. The Court found no evidence that the $1,000 limit prevented candidates and political committees from amassing the resources necessary for effective advocacy. Id. at 21. The Court refused to analyze the propriety of the specific dollar amount of the contribution limits. Id. at 30. The Court cautioned, however, that if the contribution limits were too low, the limits could be unconstitutional. Id.

The Court struck down the independent expenditure limitation which prohibited a candidate from using more than $1,000 of his own money in his campaign and also limited a candidate's total campaign expenditures. Id. at 39. The Court distinguished limits on expenditures from limits on contributions, concluding that the expenditure limits were more restrictive of speech, as they "necessarily reduce[ ] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating in today's mass society requires the expenditure of money." Id. at 19 (footnote omitted).

In addition, the Court concluded that the government interest in preventing corruption or the appearance of corruption could not justify the ceiling on independent expenditures. Id. at 45, 53-54. The Court found little relationship between the interest of avoiding corruption and limiting expenditures to one's own campaign or limiting overall campaign expenditures, particularly in light of the limit on campaign contributions. Id. at 55.

The State argues that the Court in Buckley applied strict scrutiny only to legislation limiting independent expenditures and applied a lower, intermediate standard of review to contribution limits. Citing the passages from Buckley referred to above, the State argues that contribution limits are entitled to an intermediate level of scrutiny because contributions are only symbolic expression of support, and limiting contributions does not infringe on the contributor's freedom to discuss candidates and issues.

We recognize that the Court distinguished restrictions on independent expenditures from restrictions on contributions. Buckley, 424 U.S. at 20-21. Since Buckley, members of the Court, in dicta, have indicated that contribution limits should receive a lower level of scrutiny. See Federal Election Comm'n v. Massachusetts Citizens for Life, 479 U.S. 238, 259-60 (1986); California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 196 (1981) (Marshall, J., plurality); Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 301 (1981) (Marshall, J., concurring in judgment). In contrast, other members of the Court strongly disagree, arguing that nothing less than strict scrutiny should apply to contribution limits. See California Medical Ass'n, 453 U.S. at 201-02 (Blackmun, J., concurring in part and in judgment); Citizens Against Rent Control, 454 U.S. at 302 (Blackmun and O'Connor, JJ., concurring in judgment) ("ordinance cannot survive constitutional challenge unless it withstands 'exacting scrutiny'"). The Court has not ruled that anything other than strict scrutiny applies in cases involving contribution limits. When the Court in Buckley analyzed the contribution limits, it articulated and applied a strict scrutiny standard of review. Id. at 25. Therefore, like other courts since the Buckley decision, we must apply the "rigorous" standard of review articulated in Buckley. See e.g., Harwin v. Goleta Water Dist., 953 F.2d 488, 491 n.6

(9th Cir. 1991) (recognizing that contribution limits may be subject to a lower level of scrutiny, but requiring the government to show "a sufficiently important interest and employ[ ] means closely drawn to avoid unnecessary abridgement of associational freedoms") (quoting Buckley, 424 U.S. at 25).

Moreover, that voters adopted Proposition A by initiative does not affect the applicable level of scrutiny. We must analyze Proposition A under the same standard that we apply to the product of a legislature. "It is irrelevant that the voters rather than a legislative body enacted [a statute], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." Citizens Against Rent Control, 454 U.S. at 295.

Thus, we apply strict scrutiny in this case, and the State must show that the Proposition A limits are narrowly tailored to meet a compelling state interest. "When the Government defends a regulation on speech . . . it must do more than simply 'posit the existence of the disease sought to be cured.' . . . It must demonstrate that the recited harms are real, . . . and that the regulation will in fact alleviate these harms in a direct and material way." United States v. National Treasury Employees Union, 115 S.Ct. 1003, 1017 (1995) (quoting Turner Broadcasting Sys., Inc. v. Federal Communications Comm'n, 114 S.Ct. 2445, 2470 (1994) (Kennedy, J., plurality)).

In Buckley, 424 U.S. at 25-26, the Court identified the compelling interest as "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." Id. at 25 (emphasis added). The Court reiterated

this interest at least seven times. Id. at 25-29. It found it unnecessary to look beyond this primary interest to the remaining interests offered to justify contribution limits. Id. at 25-26 (identifying the other interests as equalizing the relative ability of all citizens to affect the outcome of an election and slowing the skyrocketing cost of political campaigns). The Court, in discussing large contributions, specifically referred to disturbing examples surfacing after the 1972 election.[5] Id. at 27. Examining the 1974 election, the Court found that the $1,000 contribution limit would not severely impact political dialogue, pointing out that most contributions (94.9 percent in the 1974 election) came from contributions of $1,000 or less. Id. at 21 n.23, 26 n.27. The Court decided that in addition to requiring the disclosure of contributions, Congress was entitled to conclude that contribution limits were necessary "to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." Id. at 28.

---

[5] In Buckley, 424 U.S. at 27 n.28, the Court cites the court of appeals discussion of such abuses in Buckley v. Valeo, 519 F.2d 821, 839-40 nn.36-38 (D.C. Cir. 1975) (per curiam). The court of appeals listed examples of large contributions including: dairy organizations pledging two million dollars to the Nixon campaign in an effort to schedule a meeting with White House officials regarding price supports, id. at 839 n.36; contributions from the American Dental Association to incumbent California congressmen, id. at 839 n.37; contributions by H. Ross Perot, whose company supplied data processing for medicare and medicaid programs, to members of the House Ways and Means Committee, the Senate Finance Committee, and the House Appropriations Committee, id.; and large contributions by those seeking ambassadorial appointments from President Nixon, id. at 840 n.38.

The Supreme Court recently reaffirmed that the compelling interest identified in Buckley was limiting large contributions to candidates. The Court stated:

> Buckley identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a candidate:
>
> > To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
> >
> > . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Citizens Against Rent Control, 454 U.S. at 296-97 (citations and quotations omitted) (emphasis added).

The district court held that "[u]nder Buckley, Missouri clearly has a compelling state interest in limiting campaign contributions." Carver, 882 F. Supp. at 904. This does not square with the interest of limiting "large

campaign contributions" as defined in Buckley. The District court's decision substantially broadens the compelling interest identified in Buckley. The district court erred as a matter of law in extending Buckley to the infinitely broader interest of limiting all, not just large, campaign contributions.

The rationale of the district court's opinion is perhaps explained by the State's argument before us. The State sets out the compelling state interest justifying Proposition A in general terms. The State identifies the compelling interest as that of attacking, "not just the reality, but even the appearance or perception of corruption that may take the form of a 'quid pro quo' between a contributor and a candidate."[6] The State, however, fails to

---

[6] In its amicus brief, The Association of Community Organizations For Reform Now (ACORN) adds the two interests not reached in Buckley to justify the contribution limits in Proposition A. ACORN includes equalizing the relative ability of all citizens to affect the outcome of elections as additional justification for the Proposition A limits. This latter interest is close to running afoul of the Court's statement in Buckley, 424 U.S. at 48-49, that restricting "the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . ." See also Shrink Mo. Gov't PAC, No. 95-2857, slip op. at 8-9. In addition, ACORN states that supporters of Proposition A sought to change the nature of local campaigns away from "hot button sound bites" in thirty-second television commercials toward a substantive discussion of the issues. As laudable as this interest may appear, these comments, on their face, manifest a content based restriction on expression and association. See Turner Broadcasting Sys., 114 S.Ct. at 2459 (discussing content based restrictions).

refine this general interest consistent with the compelling interest defined by the Court in Buckley as limiting the reality or perception of undue influence and corruption from large contributions. See Citizens Against Rent Control, 454 U.S. at 296-97. We examine the contribution limits in section 130.100 in light of this compelling interest.

III.

A.

Our review of the district court's factual findings in this First Amendment case is governed by the Supreme Court's recent decision of Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 115 S.Ct. 2338 (1995). The Court instructed that, when considering whether the petitioners' activity is protected speech, we have "a constitutional duty to conduct an independent examination of the record as a whole, without deference to the trial court." Id. at 2344 (quoting Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 499 (1984)). The Court explained:

> The requirement of independent appellate review is a rule of federal constitutional law . . . . [T]he reaches of the First Amendment are ultimately defined by the facts it is held to embrace, and we must thus decide for ourselves whether a given course of conduct falls on the near or far side of the line of constitutional protection. Even where a speech case has originally been tried in a federal court, subject to the provision of Federal Rule of Civil Procedure 52(a) that findings of fact shall not be set aside unless

> clearly erroneous, we are obliged to make a fresh examination of crucial facts.

Id. (citations and quotations omitted). Hurley requires that we independently review the facts to decide whether certain conduct is entitled to First Amendment protection. The factual findings surrounding the determination of whether the Proposition A limits unconstitutionally interfere with Carver's free speech and association rights are so intermingled with the constitutional questions of law that we are obligated "to make an independent examination of the whole record . . . ." Id. (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 285 (1964)).

B.

In considering Carver's argument that "the limits imposed by Proposition A are so low as to be an unconstitutional restriction of First Amendment rights of speech and association," the district court acknowledged that "what determines the constitutionality of the limits is the dollar amount of the limits." Carver, 882 F. Supp. at 904-05. Comparing the $1,000 limit on contributions to candidates for federal offices in Buckley with the Proposition A limits, the court emphasized the incremental nature of the Proposition A limits, which vary according to population and the office being sought.[7] Id. at 905. The court concluded that "[t]he stairstepping of the contribution limits demonstrates a more narrow tailoring of Proposition A to fit the state's goal." Id.

---

[7] The Proposition A limits stand alone, as Missouri does not provide public funds for campaign purposes, unlike the United States and a number of other states.

The district court observed that there was no evidence that the Proposition A limits would dramatically affect campaign funding or candidates' ability to communicate to the voters. Id. The court relied on the fact that twenty-seven states and the federal government have imposed contribution limits, and that an overwhelming seventy-four percent of Missouri voters "determined that contribution limits are necessary to combat corruption and the appearance thereof." Id. The court found that "Proposition A does not favor incumbents and that many challengers welcome limits on contributions as a way to stop incumbents from accepting large contributions." Id. Finally, the district court referred to expert testimony indicating that more people will contribute to campaigns when contribution limits are in place, because people feel that the candidates will appreciate and be more responsive to smaller contributors. Id. at 905-06.

These findings may address the desirability of campaign contribution limits, but they do not focus on whether the Proposition A limits are narrowly tailored to address the reality or appearance of corruption associated with large contributions. While indicating popular sentiment in favor of campaign finance reform, the fact that seventy-four percent of the voters approved Proposition A does not assist our analysis, because voters may not adopt an unconstitutional law any more than the legislature. Citizens Against Rent Control, 454 U.S. at 295; see also U.S. Term Limits, Inc. v. Thornton, 115 S. Ct. 1842, 1871 (1995) (holding unconstitutional congressional term limits adopted by voter initiative).

The district court's discussion shows the district court posed, but did not answer, the question of whether the contribution limits were too low. Instead, the court only concluded that the stairstepping of the limits demonstrated

that the limits were narrowly tailored. The fact that Proposition A sets forth graduated limits has nothing to do with whether the limits are so low as to be unconstitutional.

C.

Carver argues that the evidence establishes that the limits in Proposition A violate his right to associate as a contributor. The State responds that Carver has not proved that Proposition A limits his right to contribute at a meaningful level. The State contends that the Proposition A limits do not prevent Carver from effectively speaking on behalf of a candidate or joining with other individuals to express themselves in constitutionally protected independent committees, such as those involved in Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994), cert. denied, 115 S. Ct. 936 (1995). The State argues that there was no proof that contributors like Carver could not find other outlets for effectively expressing their message in Missouri elections.

While the extent of Carver's testimony is at best skeletal, it is sufficient to demonstrate that Carver has contributed, and intends to contribute in the future, amounts in excess of the Proposition A limits to support his interest in "good candidates" and "good government." The State's argument that Carver could continue to exercise his First Amendment rights by joining an independent group does not address whether the limits are so low as to prevent Carver from freely associating with a candidate.

The State points out that Buckley does not require specific proof of the maximum contribution limit, and that we may not use "a scalpel" to invalidate Proposition A. It is true that the Court did not analyze the propriety of the $1,000 limit. Indeed, the Court observed that while

Congress could have structured the limits in a graduated fashion for congressional and presidential campaigns, its failure to do so did not invalidate the legislation. Buckley, 424 U.S. at 30. The Court reiterated the court of appeals' statement that "a court has no scalpel to probe" whether a different ceiling might not serve as well. Id. Although we certainly are not free to fine tune the limits established by Proposition A, and we generally accept the limits established by the legislature, Buckley instructs that we must invalidate that judgment when the "distinctions in degree" become "differences in kind." Id.

The Court in Buckley, 424 U.S. at 30, pointed to two decisions, Kusper v. Pontikes, 414 U.S. 51 (1973), and Rosario v. Rockefeller, 410 U.S. 752 (1973), as illustrating differences in kind. In Rosario, 410 U.S. at 754, the Court approved a party enrollment provision requiring a voter to enroll in a party at least thirty days before the general election in order to vote in the next party primary. The Court held that, although the cutoff date for enrollment could occur up to eight months before a presidential primary, and up to eleven months before a nonpresidential primary, the requirement was not arbitrary and unconnected to the important state goal of inhibiting party raiding. Id. at 760.

The Court, however, struck down a party enrollment requirement in Kusper, 414 U.S. at 52, which prohibited a voter from voting in the primary election of a political party if he had voted in the primary of another party in the preceding twenty-three months. The Court reaffirmed its decision in Rosario, but held that the enrollment requirement at issue caused a two-year delay for certain voters, and thus, violated the voter's right to free political association. Id. at 61. Although the Court allowed an eight-month delay in Rosario, the almost two-year delay in

Kusper, nearly three times the delay approved in Rosario, crossed the constitutional line. Thus, the enrollment requirement in Kusper amounted to a "difference in kind."

Similarly, in Day, 34 F.3d at 1365, we dealt with the issues raised by very low contribution limits. We considered the constitutionality of a Minnesota statute imposing a $100 limit on contributions to political committees. Although Day did not consider contribution limits to candidates, we compared the $100 limit on contributions to political committees in Day to the $1,000 limit on contributions to candidates considered in Buckley. Day, 34 F.3d at 1366. After recognizing that the $1,000 limit in Buckley was not a "constitutional minimum," we nevertheless concluded that the $100 limit significantly impaired the ability of contributors to exercise their First Amendment rights. Id. We held that the limit was "too low to allow meaningful participation in protected political speech and association," and we concluded that the law was "not narrowly tailored to serve the state's legitimate interest in protecting the integrity of the political system." Id. In reaching this conclusion, we relied on the fact that about 25 to 33 percent of the contributions to political committees in the most recent election exceeded the $100 limit, and that after adjusting for inflation, the limit was about 4 percent of the $1,000 limit in Buckley. Id. Our observation in Day about the effect of inflation applies with equal force in this case.

The district court referred to the fact that twenty-seven states have contribution limits, but it did not analyze the limits in detail. Any meaningful comparison of these limits must include consideration of not only the amount, but also whether the limits are per election cycle or per election. The Proposition A limits, ranging from $100 to $300 per election cycle, are dramatically lower than the

$2,000 limit per election cycle approved in Buckley.[8] Not only are the Proposition A limits much lower than the federal limits, they are lower than the limits in any other state. Two states, Montana and Oregon, have limits for state senate races that equal those in Proposition A, but their limits for statewide offices and state representatives are greater than those in Missouri.[9]

The question thus becomes whether Missouri must adopt the lowest contribution limits in the nation to remedy

---

[8] Employing our analysis in Day, the amicus brief of the American Civil Liberties Union points out that after adjusting for inflation, Proposition A's $300 limit is 6 percent of the limit per election cycle considered in Buckley, the $200 limit is 4 percent of the Buckley limit per election cycle, and the $100 limit is only 2 percent of the Buckley limit per election cycle.

[9] Montana and Oregon recently adopted these restrictive contribution limits by initiative. See Mont. Code Ann. § 13-37-216 (Supp. 1995); 1995 Or. Laws 1, 3. The Montana limits are on a per election basis, but when they are converted to an election cycle basis, the limits are: (1) $800 to candidates filed jointly for the office of Governor and Lieutenant governor, (2) $400 to candidates in a statewide election other than Governor and Lieutenant Governor, and (3) $200 to candidates for any other public office. Mont. Code Ann. § 13-37-216. When similarly considered, the Oregon limits are: (1) $1,000 to a candidate for "Governor, Secretary of State, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of the Bureau of Labor and Industries or judge of the Supreme Court, Court of Appeals or Oregon Tax Court" and (2) $200 to a candidate for State Senator or State Representative. 1995 Or. Laws 3.

the corruption caused by large campaign contributions. The State presented testimony at trial about a $420,000 contribution from a Morgan Stanley political action committee to various races in north Missouri, and about the "Keating Five" scandal.[10]

None of these examples prove that the Proposition A limits are narrowly tailored. A $420,000 contribution is a far cry from the limits in Proposition A, and the other examples involve individual conduct leading to criminal prosecution. We cannot conclude that the limits in Proposition A are in any way narrowly tailored or carefully drawn to remedy such situations. See Massachusetts Citizens for Life, 479 U.S. at 265 (we may "curtail speech only to the degree necessary to meet the particular problem at hand"); Day, 34 F.3d at 1366.

In considering whether the Proposition A limits are narrowly tailored, we must also recognize that the limits were not adopted in a vacuum. The question is not simply that of some limits or none at all, but rather Proposition A as compared to those in Senate Bill 650, which was to become effective January 1, 1995.

---

[10] The ACORN amicus brief also agrees that the Proposition A limits are necessary and narrowly tailored, citing the Dewey Crump and William Webster scandals. Dewey Crump was a Missouri State Representative accused of sponsoring legislation in exchange for kickbacks. William Webster was Missouri's Attorney General who pleaded guilty to a charge of conspiracy to misuse state property.

The Proposition A limits are only ten to twenty percent of the higher limits in Senate Bill 650.[11] The State

---

[11] On an election cycle basis, the contribution limits contained in Proposition A and Senate Bill 650 compare as follows:

Office	Senate Bill 650	Proposition A	Percentage of Senate Bill 650
Statewide Races	$2,000[a]	$300[b]	15%
State Senator	$1,000[c]	$200[d]	20%
State Representative	$500[e]	$100[f]	20%
Other Races: Less Than 100,000 Pop.	$500[g]	$100[h]	20%
100,000 to 250,000 Pop.	$1,000[i]	$200[j]	20%
More Than 250,000 Pop.	$2,000[k]	$200[l]	10%

[a] Mo. Rev. Stat. § 130.032.1(1).

[b] Mo. Ann. Stat. § 130.100(3).

[c] Mo. Rev. Stat. § 130.032.1(2).

[d] Mo. Ann. Stat. § 130.100(2). Missouri State Senate districts consist of approximately 150,000 people. 1995-96 State of Missouri Official Manual, at 123.

[e] Mo. Rev. Stat. § 130.032.1(3).

[f] Mo. Ann. Stat. § 130.100(1)(a). Missouri

produced no evidence as to why the Proposition A limits of $100, $200, and $300 were selected. Further, the State presented no evidence to demonstrate that the limits were narrowly tailored to combat corruption or the appearance of corruption associated with large campaign contributions. See Buckley, 424 U.S. at 25. The record is barren of any evidence of a harm or disease that needed to be addressed between the limits of Senate Bill 650 and those enacted in Proposition A. See National Treasury Employees Union, 115 S. Ct. at 1017.

In ruling that the contribution limits in Buckley were narrowly tailored, the Supreme Court pointed out that only about five percent of the contributors in the 1974 election gave more than the $1,000 limit. Buckley, 424 U.S. at 21 n.23. The State's own evidence shows that a much higher percentage of contributions will be impacted by the limits in Proposition A. At trial, the State presented exhibits showing contributions made in past races for Auditor, State Senate

---

(foot cont.)

State Representative districts consist of approximately 30,000-33,000 people. 1995-96 State of Missouri Official Manual, at 184-85.

[g] Mo. Rev. Stat. § 130.032.1(4).

[h] Mo. Ann. Stat. § 130.100(1)(a).

[i] Mo. Rev. Stat. § 130.032.1(5).

[j] Mo. Ann. Stat. § 130.100(2).

[k] Mo. Rev. Stat. § 130.032.1(6).

[l] Mo. Ann. Stat. § 130.100(2).

and State Representative.[12] According to the State's exhibits, in the 1994 Auditor's race, 19.5 percent of the contributors gave more than the $300 Proposition A limit, but less than the $1,000 Senate Bill 650 limit.[13] In the State Senate race, 21.6 percent of the contributors gave more than the $200 Proposition A limit, but less than the $1,000 Senate bill 650 limit on an election cycle basis.[14] In the State Representative race, 19.0 percent of the

---

[12] The races were (1) the 1994 State Auditor's race, (2) the 1992 Twenty-Seventh District State Senate race, and (3) the 1992 Tenth District Missouri House of Representatives race. The State selected these sample races because they were among the races with the highest contributions.

[13] 19.5 percent is actually too low because the State's exhibit is based on the $1,000 per election limit in Senate Bill 650, and not the $2,000 limit per election cycle. The State's exhibit failed to show the actual number of contributors giving more than the $300 Proposition A limit but less than the $2,000 election cycle limit in Senate Bill 650. The State's exhibit showed that 19.5 percent of the contributions were between $301 and $1,000, and 8.0 percent were more than $1,000. The exhibit does not indicate what percent of the contributions over $1,000 should also be included as being within the $2,000 Senate Bill 650 election cycle limit. While the percentage is undoubtedly higher than the 19.5 percent set out above, the precise amount is not shown.

[14] This is the only race where the exact percentage of contributors giving more than the Proposition A limit but less than the Senate Bill 650 limit on an election cycle basis may be determined from the data presented by the State.

contributors gave more than the $100 Proposition A limit, but less than the $250 Senate Bill 650 limit.[15]

Further, the State's exhibits show that 27.5 percent of the contributors in the 1994 Auditor's race gave more than the $300 Proposition A limits. In the State Senate race, 23.7 percent of the contributors gave more than the $200 Proposition A limit. Finally, in the State Representative race, 35.6 percent of the contributors gave more than the $100 Proposition A limit.

The State made no showing as to why it was necessary to adopt the lowest contribution limits in the nation and restrict the First Amendment rights of so many contributors in order to prevent corruption or the appearance of corruption associated with large campaign contributions. Proposition A substantially limits Carver's ability to contribute to candidates and will have a considerable impact on many contributors besides Carver. The State simply argues that limits which are nearly four times as restrictive as the limits approved in Buckley are narrowly tailored. The State argues we may not fine tune the specific dollar amount of the limits, but fails to demonstrate that the Proposition A limits are not a "difference in kind." See Kusper, 414 U.S. at 61

---

[15] Again, the State's calculation is based on the $250 per election limit in Senate Bill 650, and not on the $500 limit per election cycle. The State's exhibit showed that 19.0 percent of the contributions were between $101 and $250, 15.7 percent were between $251 an $1,000, and 0.9% were more than $1,000. We have no way of knowing what portion of the contributions between $251 and $1,000 fell below the $500 limit per election cycle. Undoubtedly, some of these contributions should be included as between the Proposition A and Senate Bill 650 limits.

(overturning an enrollment requirement approximately three times longer than that approved by the Court in Rosario). We hold that the Proposition A limits amount to a difference in kind from the limits in Buckley. The limits are not closely drawn to reduce corruption or the appearance of corruption associated with large campaign contributions. Thus, the State has failed to carry its burden of demonstrating that Proposition A will alleviate the harms in a direct and material way, Turner Broadcasting System, 114 S. Ct. at 2470, or is closely drawn to avoid unnecessary abridgement of associational freedoms, Buckley, 424 U.S. at 25. Accordingly, we conclude that the Proposition A contribution limits unconstitutionally burden the First Amendment rights of association and expression.

IV.

The State argues from Turner Broadcasting System, 114 S. Ct. at 2471, that we "must accord substantial deference to the predictive judgments" of the legislature. The Court explained the deference accorded to congressional action is limited to assuring that "in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence." Id. The State argues that we must accord this same deference to Proposition A adopted through the initiative process by the citizens of Missouri.

There are two obstacles in the path of the State's argument. First, as we have observed before, the voters may no more violate the Constitution than the legislature. Citizens Against Rent Control, 454 U.S. at 295. Second, the deference to legislative enactments recognized in Turner Broadcasting System, 114 S.Ct. at 2471, requires that courts ascertain that the legislative body "has drawn reasonable inferences based on substantial evidence."

There is simply no evidence in the record identifying the source of Proposition A, whether it was an individual or group,[16] the process of its development, nor the reasons for the particular dollar limits.[17] Further, there is no evidence of the details of the campaign waged in support of the initiative. There is, simply put, a failure of proof as to any of the facts Turner Broadcasting System would require that we consider to justify according deference.

Whether the deference Turner Broadcasting System requires for acts of Congress extends to the acts of the state legislative body is an issue not before us to decide. Legislative bodies consist of elected representatives shown to be bound by the United States Constitution, and their legislative product is subject to veto by the elected executive, either President or Governor. The process of enactment, while perhaps not always perfect, includes deliberation and an opportunity for compromise and

---

[16] Only the amicus briefs identify the sponsors and participants in the initiative campaign for Proposition A. These include Missourians for Campaign Finance Reform, a coalition composed of the Missouri Public Interest Research Group, ACORN, the Missouri League of Women Voters, and United We Stand - Missouri.

[17] Proposition A differs from the initiative procedures in some states, which either require or permit the ballot materials describing the proposition to include a statement of the purposes and reasons for the enactment. There was no such statement with respect to Proposition A.

amendment,[18] and usually committee studies and hearings. These are substantial reasons for according deference to legislative enactments that do not exist with respect to proposals adopted by initiative. On the evidentiary showing before us, there is no justification to accord Proposition A the deference that Turner Broadcasting System requires for congressional action. See Xniquez v. Arizonans for Official English, Nos. 92-17087, 93-15061, 93-15719, 1995 WL 583414, at *21 (9th Cir. Oct. 5, 1995) (en banc) (noting ballot initiative lacked legislative findings and was not subject to extensive hearings or analysis).

V.

In conclusion, we hold that the campaign contribution limits in Proposition A, Mo. Ann. Stat. § 130.100, are not narrowly tailored to meet the compelling state interest of limiting the influence of corruption associated with large campaign contributions, and is, therefore, unconstitutional. We reverse the decision of the district court and remand the case to the district court for the entry of judgment permanently enjoining the State and the Missouri Ethics Commission from implementing, enforcing, or acting in reliance upon section 130.100.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

---

[18] Indeed the process of enactment of Senate Bill 650 demonstrates the back and forth action of both the House and the Senate, and considerable effort to achieve a conference substitute agreeable to both bodies.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

THOMAS D. CARVER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 94-3505-CV-S-4
	)	
JEREMIAH W. NIXON, et al.,	)	
	)	
Defendants.	)	

ORDER

The matter before the Court is a request to issue a decision granting a permanent injunction enjoining the enforcement of Proposition A, §130.100 RSMo 1994 and declaring the new law unconstitutional.

Plaintiff Thomas Carver filed a civil rights suit for declatory and injunctive relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202 to enjoin defendants from enforcing Missouri Statute Section 130.100 otherwise known as "Proposition A." On December 28, 1994, this Court granted plaintiff's motion for a temporary restraining order and ordered the parties to file suggestions concerning whether the injunction should become permanent. On January 26, 1995, the temporary restraining order became a preliminary injunction and the Court ordered the parties to inform the Court whether they would request an evidentiary hearing in the case. On February 3, 1995, plaintiff requested an evidentiary hearing which was held

on March 31, 1995. The parties filed written suggestions in support of an in opposition to a permanent injunction. For the following reasons, the Court will not issue a permanent injunction in this case.

Statement of Facts

Missouri voters passed an initiative called Proposition A on November 8, 1994. Proposition A included Section 130.100 which provides:

> 130.100. Contribution Limits: There shall be the following limitations on campaign contributions:
>
> (1) No person or committee shall make a contribution to any one candidate or candidate committee with an aggregate value in excess of:
>
> (a) $100 per election cycle per candidate in districts with fewer than 100,000 residents;
>
> (2)[sic] $200 per election cycle per candidate, other than statewide candidates, in districts of 100,000 or more residents. For purposes of this section, "statewide candidates" refers to those candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer, and Secretary of State.

> (3)[sic] $300 per election cycle per statewide candidate.
>
> (2) No person, entity or committee shall make a contribution to any other person, entities or committees for the purpose of contributing to a specific candidate which when added together or when added together with contributions made directly to the candidate or to the candidate's committee, will have an aggregate value in excess of the limits stated in section 1.

Missouri Revised Statute Section 130.011(16) defines an election cycle as "the period of time from general election for an office until the next general election for the same office."

Issue

The sole issue in this case is whether the limits on campaign contributions set in Proposition A are too low as to be deemed an unconstitutional restriction on plaintiff's right to political expression and association under the First Amendment.

Plaintiff's Argument

Plaintiff challenges the constitutionality of the provision of Proposition A limiting campaign contributions. Plaintiff asserts that the restriction on his ability to make contributions to candidates in excess of aggregate limits per election cycle infringe upon his rights to free speech and association. Plaintiff claims the contribution limits under Proposition A are low enough as to be an unconstitutional interference with his ability to support candidates and to

communicate with potential supporters for fundraising purposes. Plaintiff further argues candidates today must buy expensive time and space in print and electronic media in order to successfully campaign because these are the two major effective forms of campaigning. He argues the contribution limits will inhibit the candidates' ability to communicate their political stances and goals to the voters.

Plaintiff contends incumbents have an advantage in fundraising due to their name recognition and their already existing supporters. Plaintiff is concerned it will be particularly difficult for challengers to raise the funds needed to successfully mount a campaign against incumbents given the contribution limits and the cost involved in purchasing effective advertising. Wealthy candidates would also have an advantage over the less wealthy who would need to spend a significant amount of time seeking contributions.

Plaintiff argues the law is not narrowly tailored to meet the state's interest of avoiding corruption or the appearance of corruption. Specifically, plaintiff argues the law will not prevent wealthy special interests from fighting against the candidates who oppose them. Proposition A does not address or limit independent expenditures or indirect contributions to a campaign. Indirect contributions include actions such as corporations giving employees a leave of absence in order that they may work as campaign volunteers or contributors spending personal funds to promote the candidate without donating directly into the candidate's political fund. Plaintiff argues because Proposition A does not comprehensively attack all of the ways people and special interest groups may purchase influence with elected officials, the Court should enjoin enforcement of the law and declare it unconstitutional.

Discussion

The case setting forth the general principles to be applied in determining the constitutionality of efforts at campaign finance reform is Buckley v. Valeo, 424 U.S. 1 (1976), 46 L.Ed.2d 659, 96 S.Ct. 1089 (1976). In Buckley the Supreme Court considered the constitutionality of several provisions of the Federal Election Campaign Act of 1971 (FECA). FECA limits campaign contributions in federal elections to $1,000 per individual contributor or group and to $5,000 per political committee for any single candidate per election. 424 U.S. at 7.

In Buckley the Supreme Court found two constitutional protections as to be implicated by campaign finance reform: political expression and association. The Court recognized that a major purpose of the First Amendment is to protect political speech. "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." Buckley, 424 U.S. at 14. However, the importance of political debate does not preclude all limitations on either freedom of association or freedom of speech in the political context. "Neither the right to associate nor the right to participate in political activities is absolute." Id. at 25 (quoting CSC v. Letter Carriers, 413 U.S. 548, 567, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973)). Limitations on these rights are permissible where a compelling state interest is served, if the limitations imposed are narrowly tailored to serve that interest. Buckley, 424 U.S. at 25; see Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). Thus, even a significant interference with protected rights of political association may be sustained so long as the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of

First Amendment rights to association. Buckley, 424 U.S. at 25.

The Supreme Court in Buckley recognized that governments have a compelling interest in preventing corruption and the appearance of corruption in the electoral system that may result from the flow of large amounts of money from individual contributors to candidates. Id. at 25-27. In its analysis, the Supreme Court did not find it necessary to look beyond the Act's primary purpose of limiting the actuality and appearance of corruption in order to find a constitutionality sufficient justification for the contribution limitations. Id. at 26. Under Buckley, Missouri clearly has a compelling state interest in limiting campaign contributions.

The other applicable case is Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994). In Day, the Eighth Circuit reviewed the constitutionality of Minnesota's campaign finance reform laws. The provision plaintiff argues is applicable to this case concerns limits put on contributions to and from political committees. The Eighth Circuit held that the $100 limit was so low as to infringe upon citizens' First Amendment right to political association and free political expression. Id. at 1365-66. The language of the Minnesota statute concerning contribution limits that was at issue is as follows:

> Subd. 12 Contributions to other political committees or funds. The treasurer of a political committee or political fund, other than a candidate's principal campaign committee or a political party unit as defined in section 10A.275, shall not permit the political committee or political fund to accept aggregate contributions from an

> individual, political committee, or political fund in an amount more than $100 a year.

The Minnesota statute differs from Proposition A in that it regulates contributions to independent committees and not direct contributions to individual candidates and their campaign committees. The court of appeals held that because the limit applies to contributions both by and to political committees and funds, the limit affects free association as well as free speech. Id. at 1365. The court held an annual $100 limit on contributions to or by political funds and committees is too low to allow meaningful participation in protected political speech and association and, thus, is not narrowly tailored to serve the state's legitimate interest in protecting the integrity of the political system.

The Day case is only applicable to this case under very narrow circumstances. Under Proposition A, there are no limits being made on contributions to or by political committees unless the purpose is to contribute to a specific candidate and when the contributions by themselves or when added together with contributions made directly to the candidate or to the candidate's committee will have an aggregate value in excess of the stated limits. Proposition A, 130.100(2). The limits in Proposition A restrict the amounts persons or committees may contribute to a candidate or a candidate committee. Under Buckley, some limits on the amount of contributions made by persons or committees to candidates and their campaign committees are constitutional. The remaining questions in the analysis is whether the limits imposed by Proposition A are so low as to be an unconstitutional restriction of First Amendment rights of speech and association.

The Court must determine whether Proposition A's campaign contribution limits are sufficiently tailored to meet the state's goal of maintaining the appearance of political integrity in the system without violating constitutional guarantees. This question addresses plaintiff's first argument that the dollar limits are too low. Experts at the hearing indicated they agreed with the Court that what determines the constitutionality of the limits is the dollar amount of the limits. The Supreme Court held in Buckley that a $1,000 limit on contributions to a candidate for a federal office such as the U.S. Senate is a constitutional limit. Here the limits are lower, however they are incremental according to the size of the district and voting population and the type of office being sought. Logically, in districts with a lower population, candidates have a smaller area in which they must campaign and fewer voters with whom they must communicate. Proposition A's limits are higher for contributions made to statewide candidates but the risk of garnering influence is lessened by the fact that there will be a larger number of contributors in those races. Further, the higher limits will help the candidates campaign in the larger geographical area of the entire state. The stairstepping of the contribution limits demonstrates a more narrow tailoring of Proposition A to fit the state's goal.

In this case, an overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof. The voters, through the referendum process, set the contribution limits. This is an indication of the sentiment of the voters of Missouri as to what the limits should be in order for them to feel that the state is helping stop corruption of the appearance thereof. In Buckley, the Supreme Court declined to analyze what contribution limits would better serve government's interest, however the Court

suggested that if a plaintiff could come forward with substantial evidence that the limits were so low as to prevent candidates from "amassing the resources necessary for effective advocacy", then the candidate would have raised a cognizable claim. Buckley, 424 U.S. at 21. At the hearing, there was no indication that the contribution limitations imposed by Proposition A would have any dramatic adverse effect on the funding of campaigns and the ability of candidates to communicate to the voters.

At trial, there was evidence of the fact that in recent years, a significant number of states have imposed campaign contribution limits. Currently, at least 27 states in addition to the federal government have imposed such limits. A number of candidates have voluntarily limited the size of contributions they would accept for the purpose of assuring voters that they will not be unduly influenced by wealthier donors if voted into office. These mandatory and voluntary limits reflect the belief that steps must be taken to curb the effect of money on politics and to promote the compelling interest of impartiality in politics. Clearly, the voters of Missouri agree that the limits are an important step in promoting a compelling governmental interest in increasing the voters' trust of democratic institutions.

Plaintiff's second argument centers around plaintiff's concern that incumbents have an advantage in fundraising due to their name recognition and their already existing supporters. Plaintiff argues with the contribution limits, it will be difficult for challengers to raise the funds needed to defeat an incumbent. Further, wealthy candidates would have an advantage over the less wealthy.

It is true that incumbent candidates may often have more name recognition than challengers. However, no evidence was presented to the Court that given the limits on

campaign contributions for all candidates, challengers will not be able to raise the funds needed to launch a successful campaign. In the hearing before the Court, expert testimony indicated that Proposition A does not favor incumbents and that many challengers welcome limits on contributions as a way to stop incumbents from accepting large contributions. There was testimony recounting recent political races when challengers defeated incumbents under both mandatory and voluntary campaign contribution limits. Expert testimony also revealed that with contribution limits a greater percentage of the population will contribute to campaign because people will feel that the candidates appreciate and are more responsive to the smaller contributors.

Plaintiff's last argument is that Proposition A is not narrowly tailored to meet the state's interest because it does not limit independent expenditures or indirect contributions made to a campaign nor does it limit the amount candidates themselves may contribute to their own campaigns. Plaintiff argues because Proposition A does not comprehensively attack all of the methods of garnering political influence, the Court should enjoin enforcement of the law and declare it unconstitutional.

The Court disagrees with plaintiff. Merely because Proposition A does not close all of the loopholes does not make its methods unconstitutional. Proposition A may not be worded as precisely as it could be in order to eliminate corruption, however, the law is tailored narrowly enough to help the state meet its goals of eliminating some means of corruption and of avoiding the appearance of corruption.

It is true that Proposition A does not limit the amount of personal funds a candidate may contribute to his or her own campaign and it does not limit contributions in

their own personal direct expenditures made in promotion of a candidate. These types of limits are not at issue in this case. However, the Court notes that such limits on the candidate and on contributors would directly restrict the candidate's and contributors' own political speech and would afoul of the protections of the First Amendment, while the limits on contributions at issue here only limit indirect speech of the contributor. Certainly, contributors are free to discuss candidates and issues without restriction. Plaintiff's concern that wealthy candidates may be able to direct more effective campaigns than candidates with less personal funds is a concern both before and after the enactment of Proposition A, however, no evidence was presented to the Court that this problem will be exacerbated if Proposition A is enacted. Again, just because Proposition A does not address all problems in the arena of campaigning does not make its provisions unconstitutional. The Court finds that given the state's goals and interest, Proposition A is a positive step towards the elimination of political corruption, even if it is not comprehensive in its approach.

Conclusion

The Court finds the contribution limits imposed by Proposition A are narrowly tailored to serve a compelling state interest and they do not unconstitutionally restrict plaintiff's First Amendment rights of free political speech and association.

Accordingly, it is hereby

ORDERED plaintiff's request for a decision granting a permanent injunction enjoining the enforcement of Proposition A, §130.100 RSMo 1994 and declaring the law unconstitutional is denied.

RUSSELL G. CLARK, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Date: April 18, 1995

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DISTRICT

THOMAS D. CARVER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 94-3505-CV-S-4
	)	
JEREMIAH W. NIXON, et al.,	)	
	)	
Defendants.	)	

SUPPLEMENTAL ORDER

The Court has denied plaintiff's request for a permanent injunction and the preliminary injunction is hereby quashed.

IT IS SO ORDERED.

RUSSELL G. CLARK, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Date: April 18, 1995